IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

APPEAL NO. 298 OF 2002

IN

WRIT PETITION NO. 1507 OF 1995

WITH

CROSS APPEAL (L) NO. 10 OF 2002

Umakant Krishna Naik & Ors. .. Appellants
(Org. Respondents)

Versus

National Textile Corporation
(S.M.) Ltd. & Ors. .. Respondents
(Org.Petitioners)

Mr. N.M.Ganguli for appellant (in Appeal No.298/02).

Mr. N.P.Ramaswamy with T.R.Yadav for Respondent No.1 (in Appeal No.298/02)

Mr. N.P.Ramaswamy with T.R.Yadav for Appellant in Cross Appeal (L) No.10 of 2002.

CORAM: D.K.DESHMUKH &

J.H.BHATIA,JJ.

DATE: 30th October,2007.

P.C.

1. This Appeal is preferred by the respondents in Writ Petition No.1507 of 1995 and the Cross Appeal is preferred by the petitioners in that Writ Petition. That Writ Petition was directed against the order dated 30.11.1994 passed by the Industrial Court in Reference IC No.21 of 1987. Respondents Nos.1 to 11 in the Writ Petition and one Deepak Digambar Samant and one Prabhavati Rajaram Bhatkar were working as clerks with the Apollo Textile Mills. The said Deepak Samant and Prabhavati Bhatkar died during the pendency of the Reference IC No.21 of 1987 before the Industrial Court. Their legal representatives were brought on record.

2. Maharashtra Girni Kamgar Union had called upon the employees of Textile industry in Mumbai to resort to a strike on 18.1.1982. The strike was declared illegal by an order of the Labour Court dated 11.2.1982. On 13.1.1982, the staff went on strike for their demand of increase in wages and other demands. The employees involved in the Reference, though were clerks, also went on strike. The 14 clerks who were involved in the Reference were dismissed from service by passing separate orders in December 1982 and January, 1983.

Therefore industrial dispute was raised. That dispute was decided by the Industrial Court by its above referred award. The Industrial Court by its award dated 30.11.1994 directed the employer-Mill to allow 14 clerks to resume their duties with full back wages and continuity of service from 18.1.1982. This award was challenged by the employer in Writ Petition No.1507 of 1995. That Writ Petition was decided by a learned Single Judge of this Court on 15.7.1999. The operative part of the order passed by the learned Single Judge reads thus:-

> "Mr. Ramaswamy learned counsel for the management informs that pursuant to the order of the Industrial Court the respondent Nos.1 to 11 were reinstated in service. Thus the only question remains in this petition is about the back wages. Mr. Ramaswamy contended that the petitioner mill is facing very serious financial difficulties. He pointed out that the mill has been declared as a sick undertaking and the proceedings are pending before the BIFR. He therefore submitted that the mil is not in a position to comply with the order of the Industrial Court to pay full back wages to the employees. Considering the facts and circumstances of the case I feel that the ends

of justice would be served if the petitioner mill is directed to pay 40% back wages to the employees concerned. However, as indicated above two employees i.e. Digambar Samant and Rajaram Bhatkar died during the pendency of the reference and respondent No.1 died during the pendency of the writ petition. In respect of these employees petitioner mill is directed to pay full back wages with all terminal dues to their heirs viz. respondent nos.1,1‘2 and 13. As far as the respondent Nos. 2 to 11 are concerned the petitioner is directed to pay 40%% back wages from 18.1.1982 till their reinstatement.

In the result Rule is made partly absolute. The petitioner Mill is granted eight weeks time to comply with this order."

Thus, the learned Single Judge did not disturb the order granting reinstatement in service, but the learned Single Judge interfered with the order regarding payment of back wages and ordered that instead of full back wages, payment of 40% to 12 clerks be made and maintained the award of the Industrial Court in relation to 2 clerks who had died. The order reducing the back wages is challenged by the employees. In the Cross

Appeal, the employer challenges the order of the learned Single Judge declining to interfere with the order granting reinstatement in service.

3. First taking up Cross Appeal filed on behalf of the employer for consideration, perusal of the operative part of the order passed by the learned Single Judge shows that the employer had clearly given up challenge to the reinstatement order. The employees were also reinstated during the pendency of the petition. In our opinion, therefore, no fault can be found with the order of the learned Single Judge declining to interfere with that part of the order whereby the award granting reinstatement in service to the employees was not interfered with. So far as the order reducing the amount of full back wages is concerned, perusal of the order shows that the learned Single Judge relied on the fact that the industry was declared as a sick industry and reference was pending before the BIFR. The fact that industry was declared as a sick industry and that a reference for rehabilitation was pending before the BIFR is not disputed. Perusal of the order passed by the BIFR shows that even the attempt of the employer to sell surplus land so that the unit can be rehabilitated was also opposed by the employees. The financial capacity of the employer or lack of it is a valid consideration while deciding the amount of back wages.

4. The learned Counsel appearing for the appellant relies on a Judgment of the Supreme Court in the case of **Gujarat Steel Tubes Ltd. vs. Gujarat Steel Tubes Mazdoor Sabha and Ors.reported in 1980 Lab. I.C.1004** specially on the observations in paras 141 and 142 of that judgment. Firstly, now it cannot be said that on setting aside of the termination order, the order for payment of full back wages can be made as a matter of course. The Court has to consider various circumstances in determining how much amount is to be paid as back wages. In any situation, it cannot be doubted that the financial capacity of the employer is one of the considerations on which the amount payable as back wages can be decided. In the present case, we find that the learned Single Judge has reduced the amount of back wages payable to the employees because of the fact that the industry was declared as a sick industry and making that industry to pay back wages at that juncture would result in further creating problems for the industry. In our opinion, therefore, it cannot be said that the learned Single Judge has committed an error of law in exercising discretion in reducing payment of back wages and, therefore, it will not be proper for us to interfere with the order of the learned Single Judge reducing the amount of back wages.

5. The learned counsel appearing for the employer stated that without prejudice to the rights and contentions in view of the subsequent development, the employer is willing to pay 50% back wages instead of 40%. In our opinion, this statement would meet the ends of justice between the parties.

6. In the result, therefore, the Appeal fails and is dismissed. The Cross Appeal is also dismissed. No order as to costs. It is clarified that in view of the statement made by the employer now, the employees would be entitled to 50% of the back wages under the order of the learned Single Judge and not 40%.

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(D.K.DESHMUKH,J.)

(J.H.BHATIA,J.)